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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,944	03/25/2004	Luc J. Farmer	VPI/02-133 US	6398
27916	7590	03/29/2006	EXAMINER	
VERTEX PHARMACEUTICALS INC. 130 WAVERLY STREET CAMBRIDGE, MA 02139-4242			RAO, DEEPAK R	
			ART UNIT	PAPER NUMBER

1624

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claims 1-44 are pending in this application.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-44, drawn to compounds of formula (I) wherein R¹ and R² are independent substituents are NOT taken together to form a ring (i.e., monocyclic pyrimidines), corresponding composition and method of use, classified in class 544, subclass 331.
- II. Claims 1-35 and 37-44, drawn to compounds of formula (I) wherein R¹ and R² are taken together to form a ring (i.e., bicyclic pyrimidines), corresponding composition and method of use, classified in class 544, subclass various.

The inventions are distinct, each from the other because of the following reasons:

The compounds of Groups I-II are drawn to structurally dissimilar compounds. They are made independently and used independently. They would be expected to raise different issues of patentability if a compound of Group I was anticipated, the anticipatory reference would not necessarily render obvious a compound of Group II or vice-versa. They are not art-recognized equivalents, they are separately classified and require separate burdensome searches both in the literature and computer databases.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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Claims 1-44 are generic to the following disclosed patentably distinct species comprising the compounds of examples disclosed in the specification. **In addition to the election of a single group from above, applicant is required under 35 U.S.C. 121 to elect a single disclosed species falling within the elected group**, even though this requirement is traversed.

The species are independent or distinct because the compounds are structurally dissimilar such that a reference anticipating a compound may not render the remaining compounds obvious. 37 CFR 1.141(a) provides that two or more independent and distinct inventions may not be claimed in one application, whether or not the misjoinder occurred in one claim or more than one claim. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

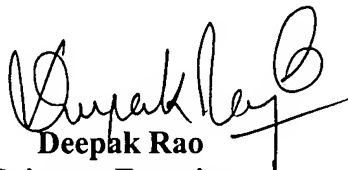
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (571) 272-0672. The examiner can normally be reached on Tuesday-Friday from 6:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James O. Wilson, can be reached at (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deepak Rao
Primary Examiner
Art Unit 1624

March 17, 2006